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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JOAQUIN SIERRA CRUZ, Defendant and Appellant.	A151279 (Contra Costa County Super. Ct. No. 05-160059-2)

Joaquin Sierra Cruz (defendant) appeals from a judgment entered after a jury convicted him of committing sexual intercourse with a child 10 years or younger (Pen. Code, § 288.7, subd. (a))[1] and a forcible lewd act upon a child (§ 288, subd. (b)(1)). The trial court sentenced him to 25 years to life in prison. Defendant contends: (1) the prosecutor committed misconduct; (2) the court erred in failing to appoint an interpreter; and (3) the court erred in precluding defense counsel from inquiring about the victim's family's financial problems, which defendant claims provided a motive for them to make false accusations. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On February 23, 2016, an amended information was filed charging defendant with four counts committed against Jane Doe 1 (JD1): sexual intercourse with a child age 10 years or younger (§ 288.7, subd. (a); count 1); forcible lewd act upon a child (§ 288, subd. (b)(1); counts 2, 4); and oral copulation with a child age 10 years or younger

[1]All further, undesignated statutory references are to the Penal Code.

(§ 288.7, subd. (b); count 3). The information also charged defendant with committing forcible lewd acts upon a child, Jane Doe 2 (JD2) (§ 288, subd. (b)(1); counts 5, 6). Counts 1, 2, 4, 5, and 6 alleged enhancements for committing substantial sexual conduct (§ 1203.066, subd. (a)(8)) and committing the offenses against multiple victims (§ 667.61, subds. (b), (e), (j)(2)).

At the jury trial, evidence was presented that defendant committed acts of sexual intercourse and forcible lewd acts against JD1 when she was seven years old. Defendant's wife was a babysitter for JD1's family, and JD1 and her brother would go to defendant and his wife's house and occasionally spend the night. Defendant would rub his penis against JD1's vagina "[b]ack and forth" in "the hole area" and have her touch and "kiss" his penis. This happened about six times. JD1 was confused about what was going on and did not tell anyone.

Several years later, after attending a "Speak Up and Be Safe" program at her school, JD1 confided in her close friends what defendant had done to her. One of the friends testified that JD1 nervously asked her during a sleepover, "Can I tell you something that I have never told anybody before, not even my mom?" When the friend said, "Of course you can trust me," JD1 said, "When I was at my babysitter's house, I was sleeping there during the night and the man babysitter came into my room and he touched me." When the friend asked JD1 what she meant by "touch," JD1 looked a little frightened, refused to talk about it any further, and said, "Never mind. I shouldn't have told you." Another friend testified that JD1 said her male babysitter put her in a locked room, removed her undergarments, touched her inappropriately, and "got on top of her" and tried to have sex with her but that his penis "didn't fit" in her vagina. JD1 was sad, crying, "very sensitive about the subject," and "very emotional" as she spoke; it "didn't seem like she wanted to talk about it." When JD1 said she "thought it was her fault," the friends reassured her that it was not her fault and told her "to tell her mom or else we would." JD1 told her mother that defendant had "raped" her. JD1's mother testified that JD1 was "hysterical" and crying as she spoke; JD1's mother immediately called the police.

Police Officer Danielle Joannides interviewed JD1, JD1's mother, and defendant. A child abuse pediatrician testified that the "vast majority" of children do not disclose sexual abuse at all and that the ones who do delay disclosure and only partially disclose. Several character witnesses including defendant's wife, niece, and daughters, his church pastor and the pastor's daughter, and a former housemate testified for the defense. Defendant also took the stand and denied any sexual abuse. Defense expert Dr. Ricardo Winkel testified that he conducted personality tests on defendant and determined there were no signs of defendant being a psychopath, sex offender, or sexually interested in minors.

The jury found defendant guilty of sexual intercourse and forcible lewd conduct against JD1 (counts 1, 2) but was unable to reach a verdict on counts 3 and 4 or any lesser included offense. The jury acquitted defendant of the charges and associated lesser included offenses in which JD2 was named as a victim.[2] The jury found the enhancement under section 1203.66 subdivision (a)(8) (substantial sexual conduct with JD1) to be true and the enhancement under section 667.61 subdivision (b)(B)(4) (forcible lewd act against more than one victim) to be not true. The trial court sentenced defendant to 25 years to life in prison on count 1 and stayed a 10-year sentence on count 2.

DISCUSSION

1. Prosecutorial Misconduct

Defendant contends the prosecutor committed misconduct that was "so egregious that it infected the trial with unfairness as to make the conviction a denial of due process." We reject his contention.

"The applicable federal and state standards regarding prosecutorial misconduct are well established. ' "A prosecutor's . . . intemperate behavior violates the federal Constitution when it comprises a pattern of conduct 'so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process.' " ' [Citations.]

[2]We do not discuss the facts related to the charges alleged as to JD2 because defendant was acquitted of those counts.

Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves ' " 'the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury.' " ' [Citation.]" (*People v. Samayoa* (1997) 15 Cal.4th 795, 841.)

" ' "[W]hen the claim [of misconduct] focuses upon comments made by the prosecutor before the jury, the question is whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion." ' " (*People v. Ayala* (2000) 23 Cal.4th 225, 284.) " ' "[A] prosecutor is given wide latitude during argument. The argument may be vigorous as long as it amounts to fair comment on the evidence, which can include reasonable inferences, or deductions to be drawn therefrom. [Citations.] It is also clear that counsel during summation may state matters not in evidence, but which are common knowledge or are illustrations drawn from common experience, history or literature.' [Citation.] "A prosecutor may 'vigorously argue his [or her] case and is not limited to "Chesterfieldian politeness" ' [citation], and . . . may 'use appropriate epithets. . . .' " ' [Citation.]" (*People v. Williams* (1997) 16 Cal.4th 153, 221.)

a. Stray Comment During Cross-examination of Defense Witness

Defendant takes issue with the following exchange that occurred between the prosecutor and a defense witness after the witness—a former housemate of defendant and his wife—testified she never saw a little girl or boy visit their home:

Prosecutor: Could you tell me where in your interview you told the defense investigator that you never saw a boy or a girl visit, did you tell the investigator that?

Witness: I did not.

Prosecutor: So the first time we're learning about it is today when the defense attorney asked you that question?

Witness: Well, I was never asked that question. So – I never felt like I had to answer it.

Prosecutor: Convenient.

At that point, defense counsel asked to approach and the trial court said, "No. You can make a record later. So far what she said she's never been asked that question before

today." Defense counsel responded, "Yes. That's true." Defense counsel then asked, "What I would ask is that the Court admonish that no under-the-breath statements be made, please." The court asked, "No more what?" then held a sidebar conference. After the conference, the court stated, "Okay. Proceed." The prosecutor resumed cross-examination.

Defendant argues that the prosecutor's one-word comment—"Convenient"—constituted misconduct because it "improperly telegraph[ed] to the jury" that the witness was "lying." This claim was forfeited by the failure to object below on the basis of prosecutorial misconduct (*People v. Ayala*, *supra*, 23 Cal.4th at p. 284), and it also fails on the merits. While the comment may have been sarcastic and/or unnecessary, it was also one word, spontaneous, not part of any pattern of improper or disparaging conduct, and spoken quietly, "under-the-breath." In *People v. Mendoza* (2007) 42 Cal.4th 686, 701, the prosecutor made several disparaging comments about the defense, including commenting, " '[c]lever objection, but it's not the point,' " in response to defense counsel's objection. The California Supreme Court held "the prosecutor's statement . . . did not constitute misconduct" because there was no " 'reasonable likelihood that the jury construed or applied any of the complained-of-remarks in an objectionable fashion.' [Citation.]" (*Ibid.*) In *People v. Hillhouse* (2002) 27 Cal.4th 469, 502, the defense expert testified during cross-examination that he recalled meeting with defense counsel only four times, not five. When the prosecutor commented, " 'Good move. Leave it off your bill,' " defense counsel objected to " 'the continued sarcasm' " and the trial court instructed, " 'proceed.' " (*Ibid.*) The California Supreme Court held the incident did not show any impropriety and did not constitute prosecutorial misconduct. (*Ibid.*)

Similarly, here, although the prosecutor may have been well advised to hold his commentary until closing argument, (*e.g.*, *People v. Arias* (1996) 13 Cal.4th 92, 162 (*Arias)* [even "harsh and colorful attacks on the credibility of opposing witnesses are permissible" during closing argument]), his brief comment regarding the defense witness's testimony was not likely to be "construed or applied [by the jury] . . . in an

objectionable fashion" (*People v. Ayala*, *supra*, 23 Cal.4th at p. 284) and did not rise to the level of misconduct.

b. Closing Argument Regarding Defense Expert Dr. Ricardo Winkel

Defendant argues the prosecutor committed misconduct by discussing during closing argument the amount of money defense expert Dr. Ricardo Winkel (Winkel) was paid and by noting that Winkel was "asked last minute" to assist in the case.

The prosecutor's comment regarding how much Winkel was paid clearly did not constitute misconduct. Evidence Code section 722 subdivision (b) expressly provides that the "compensation and expenses paid or to be paid to an expert witness by the party calling [the expert] is a proper subject of inquiry by any adverse party as relevant to the credibility of the witness and the weight of [the expert's] testimony." Thus, in *People v. Monterroso* (2004) 34 Cal.4th 743, 783–784, the California Supreme Court held a prosecutor did not commit misconduct by commenting on a defense expert's "substantial fee" and "history of testifying only for criminal defendants" and "collect[ing] good money" for his testimony. (*See also Arias*, *supra*, 13 Cal.4th at p. 162 [not misconduct for prosecutor to "remind the jurors that a paid witness may accordingly be biased"].)

The prosecutor's commentary regarding the last-minute nature of Winkel's involvement was also not misconduct. The prosecutor stated, "Dr. Winkel who you heard this morning, I mean there's not much to say [about someone] who comes in last minute, who demonstrated that [for] $6,250 an expert will come into court and say just about anything. He was quick to be assigned the case. [¶] He was asked last minute. I mean, if you were going to get asked last minute, get paid $6,000 for 25 hours of your time, you rush a report, you make misstatements, I mean, he met with the defendant one time for four to five hours, to come in and to tell us you are an expert and give us an opinion about a defendant. This is absurd." The prosecutor also criticized Winkel for using "subjective" tests that were based on "defendant's own answers" and involved simple "true" or "false" answers.

Defendant contends the prosecutor improperly made it appear as if the defense was ill-prepared when, in fact, he knew the defense had to retain Winkel shortly before

trial because its original expert unexpectedly became unavailable due to illness. However, it was well within the realm of advocacy for the prosecutor to argue the jury should consider how much time Winkel spent evaluating defendant, and the record shows the prosecutor highlighted the "last minute" nature of Winkel's involvement to support his argument that the report was rushed and might have therefore included errors. Moreover, defense counsel was able to explain to the jury during closing argument the true reason for the "last minute" selection of Winkel: "the first expert for the defense who I talked about in opening got pneumonia, couldn't come in. So we were in the middle of trial and got Dr. Winkel on board." Counsel argued the prosecution was unfairly attacking Winkel even though the expert reviewed "everything in the case" and spent four or five hours with defendant. Finally, the jury instructions made it clear the prosecutor's argument was not evidence and that the jury was responsible for evaluating the credibility of expert witnesses. Assuming defendant did not forfeit this misconduct claim by failing to object below, given the entirety of the circumstances there is no reason to believe the jury construed the prosecutor's remarks in an objectionable fashion.

c. Character Reference Letter

Defendant contends the prosecutor committed misconduct by arguing "without proof" that defendant's wife "falsified a reference letter." During trial, the defense presented a reference letter purportedly written by JD1's parents to show the prosecution was wrong about the dates defendant's wife worked for JD1's family, and when defendant may have had the opportunity to come in contact with JD1. JD1's mother testified she did not recall writing the letter, and JD1's father testified he did not remember writing the letter and also did not believe he wrote it because he would have used letterhead instead of plain paper. During closing argument, the prosecutor stated the reference letter was "a big red herring. We don't know who authored the letter or when it was written. It's signed by [JD1's parents.] It's not on the letterhead. [¶] I mean, . . . [defendant's wife] could have written it and had [JD1's parents] sign it as well, but that's not the issue." The prosecutor argued the letter "still says" defendant's wife was around JD1 from "July through November of 2008, which means the defendant had access and

was around the children." "So even to that very little time frame with the defense'[s] own evidence, it doesn't dispute [JD1's] time frame."

A prosecutor is accorded " 'wide latitude in describing the factual deficiencies of the defense case.' " (*People v. Edwards* (2013) 57 Cal.4th 658, 740.) Here, assuming defendant did not forfeit the claim by failing to object below, we reject the contention on the merits. The prosecutor highlighted doubts about the accuracy of the dates included in the reference letter and urged the jury to consider the letter's authenticity in light of the limited evidence about its origin, and in light of JD1's parents' testimony that they did not recall signing such a letter. The prosecutor's comments constituted proper advocacy.

d. Officer Danielle Joannides

Defendant contends the prosecutor committed misconduct—which resulted in a violation of his constitutional rights—by "willfully" failing to inform the trial court that Officer Danielle Joannides (Joannides), who was subject to recall after testifying for the prosecution, had a pre-planned out-of-state vacation and would not return for further testimony. We reject the contention.

At the end of Joannides' testimony during the prosecution's case-in-chief, the trial court informed her she was "subject to recall" and might be asked "to come back and answer additional questions." The following week, defense counsel sought to recall Joannides to testify during the defense case but learned from the prosecutor that she was on vacation. Defendant requested a body attachment for Joannides or a mistrial. The court denied the request for a body attachment, stating it would delay the trial and keep the jury waiting. The court also denied the mistrial motion "contingent upon the parties working out some stipulation that I think covers your bases sufficiently well" and noted that everything the defense wished to further elicit from Joannides was "either contained in a report that she wrote, or in a transcript of an interview." "So why is it that the parties . . . can't stipulate that if she were recalled to testify she would say, this, this, this and this." Defense counsel responded, "Okay." The parties ultimately stipulated that, if called in for further testimony, Joannides would testify that JD1 "told her the first time something happened was when she was around six and a half and seven. She remembers

one of the incidents happening on the night of [her older brother's] friend's bar mitzva[h]." "Further, on the date of [defendant's] arrest, he willingly waived his constitutional right to remain silent. He submitted to a one hour and 20 minute interrogation by Officer Joannides. That he did not refuse to answer a single question and the interrogation ended upon Officer Joannides' determination she had no further questions for [defendant]."

After closing argument and before verdict, defense counsel noted the prosecutor had raised the issue of defendant's demeanor during his closing argument; defense counsel said he would have also liked to ask Joannides what defendant's demeanor was like during the police interview, but was precluded from doing so because of Joannides' unavailability. The prosecutor responded that he had not commented on defendant's police interview demeanor; rather, he only commented on defendant's demeanor *at trial*, which is "fair game for anybody in this courtroom to comment on." The trial court found the parties had in good faith negotiated a stipulation regarding Joannides, that there was no mention the stipulation was insufficient, and that the prosecutor was permitted to discuss defendant's trial demeanor.

After the jury reached its verdict, defendant filed a new trial motion in which he argued that Joannides' unavailability precluded him from asking the officer about his interview demeanor and that he had entered into the stipulation regarding Joannides' testimony "under duress." The prosecutor responded that defense counsel was the one who drafted the stipulation and that he had not proposed anything about defendant's demeanor at the time.

At a hearing on the motion for a new trial, Joannides testified she had forgotten she would be on vacation when the trial court said she was subject to recall. She informed the prosecutor after her testimony that she would be gone the following week. The prosecutor argued that Joannides' cross-examination would have been inadmissible hearsay and that defendant was not deprived of a right to present evidence because his interview demeanor was not at issue and was never mentioned at trial. The trial court denied the new trial motion, rejecting defendant's claim that the stipulation was

insufficient. The court also stated: "If Joannides had been available to testify, this court would have excluded on relevancy grounds her testimony as to how the defendant behaved during the interrogation." The court further stated that even if it had allowed Joannides to testify "about the defendant's comportment, it still would have excluded the actual words spoken during the interrogation" under Evidence Code section 791. Finally, the court noted that Joannides' testimony at the hearing on the new trial motion did not disclose "any significant, admissible evidence that was not presented to the jury."

The government "cannot block or hinder a criminal defendant's access to witnesses whose testimony would be material and favorable to the defense. [Citation.]" (*People v. Treadway* (2010) 182 Cal.App.4th 562, 567.) Governmental interference that violates a defendant's compulsory-process right includes the intimidation of defense witnesses by the prosecution or making a material witness unavailable by deportation. (*Id*. at pp. 568–569.) The " 'suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.' " (*U.S. v. Valenzuela-Bernal* (1982) 458 U.S. 858, 868.) Under California law, the defendant must show a " 'reasonable possibility' " the witness could have given material and favorable testimony. (*Cordova v. Superior Court* (1983) 148 Cal.App.3d 177, 182.)

Defendant claims his "rights to compulsory and due process were violated" because the prosecutor's failure to inform the trial court of Joannides' vacation precluded him from "bolster[ing] his credibility based on the prior consistent statement he made to Officer Joannides." However, the trial court pointed out that it would have excluded evidence regarding his statements to Joannides under Evidence Code section 791. A reading of Evidence Code section 791 shows that the trial court would have been correct in doing so as neither of the exceptions to the inadmissibility of defendant's statements to police were applicable: "Evidence of a statement previously made by a witness that is consistent with his testimony at the hearing is inadmissible to support his credibility unless it is offered after: [¶] (a) Evidence of a statement made by him that is inconsistent with any part of his testimony at the hearing has been admitted for the purpose of

attacking his credibility, and the statement was made before the alleged inconsistent statement; or [¶] (b) An express or implied charge has been made that his testimony at the hearing is recently fabricated or is influenced by bias or other improper motive, and the statement was made before the bias, motive for fabrication, or other improper motive is alleged to have arisen."

"Reversal of judgment is designed not so much to punish prosecutors as to protect the fair trial rights of defendants." (*People v. Bolton* (1979) 23 Cal.3d 208, 214.) Even if the prosecutor could be faulted for Joannides' absence, defendant has not shown that any further testimony by Joannides would have been admissible, relevant, or material. Accordingly, defendant has failed to show the prosecutor's actions resulted in a deprivation of his constitutional rights.

2. Interpreter Services for Defendant

Defendant contends "the trial court violated [his] due process right to an interpreter at trial." He acknowledges the court appointed an interpreter for him when he requested one for his own testimony, and that defense counsel informed the court that there was no need for an interpreter during other parts of the trial. Defendant argues, however, that the court nevertheless violated his constitutional rights because he did not fully understand English and because he did not "**personally** waive this right." (Emphasis in original.) We reject his contention.

The California Constitution provides as follows: "A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings." (Cal. Const., art. I, § 14.) "However, an affirmative showing of need is required." (*In re Raymundo B.* (1988) 203 Cal.App.3d 1447, 1453.) "While the fact that the person who has been charged with a crime states that he does not understand English and requests an interpreter on that basis may be some evidence of the fact that the charged individual does not understand English, it cannot be considered conclusive proof of that lack of proficiency in English." (*Ibid.*) Instead, "the burden is on the accused to show that his understanding of English is not sufficient to allow him to understand the nature of the proceedings and to intelligently participate in his defense." (*Id.* at p. 1454.)

The question of necessity of an interpreter is a matter for judicial determination within the trial court's discretion. (*Id.* at pp. 1455–1456.) "As long as there was . . . evidence before the lower court that indicated the defendant did, in fact, understand English, a decision of the lower court denying the appointment of an interpreter will be upheld." (*Ibid.*)

The record shows defendant understood and spoke English and did not need—and did not request—the services of an interpreter at any time other than during his own testimony. Defendant did not request or use the services of an interpreter during his one-hour, 20-minute interview with police. He did not request or use the services of an interpreter at the preliminary hearing, and the entire exchange between the court and defendant was conducted in English. At the beginning of his direct examination, defendant testified he spoke English to his employers, had not used an interpreter to speak with defense counsel, and had requested an interpreter during his testimony only "to make sure that there was absolutely nothing [he] missed." Defendant testified he was born in Honduras in 1963 and came to the United State in 1984.

During a break in defendant's testimony, the trial court memorialized a sidebar discussion that occurred immediately before defendant testified. The court stated that after defendant requested an interpreter, the prosecutor expressed a concern "that throughout the process here, . . . defendant has proceeded in this case . . . without an interpreter." "And [defense counsel] at the sidebar indicated . . . . that both he and his client would agree that he had no claim to make at any later point in the process that he had not understood part of the proceedings, didn't know what was going on or there was some deficits because he had not been provided an interpreter."

The trial court continued: "As far as I know, there had never been a request for an interpreter. If there had been a need for an interpreter, Counsel, having consulted and conferred with his client over the course of weeks and months, would have been in a position to know whether or not an interpreter was needed. . . ." The court explained that it decided to appoint an interpreter for defendant during his testimony despite his English fluency because case law requires it to appoint an interpreter even if it has "serious

doubts" about the need for one. Neither party had any comment or correction to the court's observations and statements. At the end of defendant's testimony, the court asked defense counsel whether an interpreter would be needed for any remaining witnesses, and counsel confirmed none was needed. Under the circumstances of this case, the court did not abuse its discretion in not appointing an interpreter for the remainder of the trial.

The trial court also did not err in not obtaining a personal waiver from defendant. (*People v. Carreon* (1984) 151 Cal.App.3d 559, 572–573 ["the mere fact the right to an interpreter has been enacted in the state Constitution" does not mandate a personal waiver or a per se reversal for failure to obtain a waiver. "That strict waiver rule, including its harsh penalty, is limited to certain constitutional rights applicable to the entry of a guilty plea." [Citations.]"]) Defendant cites no relevant authority to support his position that a personal wavier was required. Instead, he relies on two distinguishable cases. In *People v. Chavez* (1981) 124 Cal.App.3d 215, 226, disagreed with on another ground in *People v. Mendez* (1999) 19 Cal.4th 1084, 1098, fn. 8, the Court of Appeal held that where *the defendant did not speak or understand English* and depended on his attorney to act as an interpreter, it was error for the court to decline to appoint an interpreter based only on counsel's statement that his client did not need an interpreter. In *People v. Resendes* (1985) 164 Cal.App.3d 812, 817, the Court of Appeal held it was error for the court to appoint only one interpreter for two defendants where both defendants did not speak English, the court never obtained a waiver from either defendant, and where the failure to appoint two interpreters resulted in significantly inhibiting attorney-client communication. In contrast, here, the court observed and found that defendant understood English fluently and did not need an interpreter, and defense counsel represented to the court that he and his client agreed there was no need for one during the remainder of the trial. We conclude there was no violation of defendant's constitutional rights.

3. JD1's Family's Financial Circumstances

Defendant contends the trial court erred in precluding defense counsel from inquiring about JD1's family's financial difficulties, which defendant claims provided a motive for them to make false accusations. We reject his contention.

During the prosecution's case in chief, defense counsel informed the trial court that JD1's father did a "very public thing . . . in 2010/2011" by "embezzling millions of dollars from . . . investors" in Orinda. "As soon as that happened, people weren't getting paid." Counsel said that JD1's family was upset at defendant—and therefore biased against him—for advocating that the staff of JD1's family be paid. The trial court asked, "if [defendant and his wife] had no more contacts or access to the children in 2010 [because they were no longer working for JD1's family], what are they doing having a conversation [with JD1's mother] in the first place?" Counsel responded that while defendant and his wife were no longer working for JD1's family, they were still working for JD2's family, who are "very close friends with [JD1's family]. So it was all one community. . . ." The court responded, "That's [] too general. . . ."

The trial court also noted that whatever bias or anger JD1's mother may have had was unrelated to JD1's reasons for testifying. "There is no evidence that [JD1] knew about the help not being paid, was told by the mother that [defendant] is no good because he's . . . instigating trouble. [¶] And, frankly, . . . I'm sure that unless she was delusional, [JD1's mother] would not . . . remotely believe that the reason why her husband's Ponzi scheme and the reason why her husband went to jail has anything to do with [defendant]." The court denied defendant's motion to elicit testimony regarding the family's financial circumstances, stating "all of these facts" the defense wishes to present are only "collaterally relevant to a very tangential issue."

" 'A trial court's exercise of discretion in admitting or excluding evidence is reviewable for abuse [citation] and will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. [Citation.]' " (*People v. Brown* (2003) 31 Cal.4th 518, 534.) We conclude the trial court acted well within its discretion in

precluding the defense from asking about the family's financial circumstances.[3] The proposed line of questioning was unrelated to the critical credibility issues surrounding JD1 and whatever motivation she may have had to implicate defendant. There was no evidence JD1, who was only eight years old in 2010, was aware of the family's financial circumstances or defendant's involvement in the staff getting paid, or that she had heard anything negative about defendant from her mother. In addition, any bias or anger JD1's mother may have felt against defendant in 2010 was far removed in time from the time JD1 disclosed the abuse to her mother in 2015. We agree with the court that evidence relating to JD1's family's financial situation was "marginal," only "collaterally relevant to a very tangential issue," and had no direct bearing on any material fact. Therefore, the trial court did not abuse its discretion in excluding the evidence.

DISPOSITION

The judgment is affirmed.

[3]We also reject defendant's claim that the trial court's exclusion of the evidence violated his constitutional rights. " 'As a general matter, the ordinary rules of evidence do not impermissibly infringe on the accused's [constitutional] right to present a defense. Courts retain . . . a traditional and intrinsic power to exercise discretion to control the admission of evidence in the interests of orderly procedure and the avoidance of prejudice.' " (*People v. Cudjo* (1993) 6 Cal.4th 585, 611.) Here, the court's exercise of discretion under the ordinary rules of evidence did not implicate defendant's constitutional rights.

_____
Petrou, J.

WE CONCUR:

_____
Siggins, P. J.

_____
Richman, J.*

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*Associate Justice of the Court of Appeal, First Appellate District, Division Two, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.